UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 937

September Term, 1981

JOHNNIE TAYLOR HALL

v.

STATE OF MARYLAND

Morton
Liss
Weant,

JJ.

Per Curiam

Filed: February 26, 1982

On July 20, 1981, Johnnie Taylor Hall, the appellant, was convicted on a guilty plea in the Criminal Court of Baltimore (Pines, J.), of driving while intoxicated. At the conclusion of the trial he was committed to the custody of the Division of Correction for one year and fined $250.00. All but sixty days of the sentence was suspended in favor of a five year probation. Now on appeal he contends the court erred in accepting the guilty plea because it did not:

1. insure he understood the nature of the charge
2. advise him of the maximum possible sentence
3. advise him of his right against self-incrimination

The agreed statement of facts presented by the State shows that at about 7:10 P.M. on Tuesday, March 3, 1981, the police stopped the appellant

who was driving sixty-three miles per hour in a thirty-five mile per hour zone. The police also detected signs that the appellant was intoxicated.

At the commencement of the proceedings, the State advised the court that:

> "The defendant is charged with driving while intoxicated. Calling the A Charge, Your Honor, and if the guilty plea to the A charge is acceptable by the Court the State will recommend one year, all but thirty weekends in the Baltimore City Jail suspended, a total of sixty days. After jail time is served the defendant is to be placed on supervised probation for a period of five years."

Thereafter the appellant was questioned by his trial counsel regarding the guilty plea and the State presented the agreed statement of facts. Then the court accepted the plea and imposed the sentence.

I. Understanding the nature of charge

The appellant first contends that the court failed to comply with the requirements of Maryland Rule 731 c. because it did not insure that he understood the nature of the charge against him. While the appellant is correct in stating that the court did not specifically ask him such questions, we note that the Supreme Court of the United States in Henderson v. Morgan, 426 U.S. 637, 647 (1976), observed:

> "Normally the record contains either an explanation of the charge by the trial judge, or at least a representation by defense counsel that the nature of the offense has been explained to the accused. Moreover, even without such an express representation, it may be appropriate to presume that in most cases defense counsel routinely explain the nature of the offense in sufficient detail to give the accused notice of what he is being asked to admit."

In the instant case the appellant during his voir dire by his trial counsel concerning his guilty plea testified:

> "Q. Do you understand the charges against you today?
>
> A. Yes I do."

Thus for the same reasons as set forth in Henderson v. Morgan, supra, we do not think the court erred in concluding that the appellant understood the nature of the charge against him. Therefore the appellant's contention is not grounds for setting aside his conviction.

II. Maximum possible sentence

Secondly the appellant, relying on English v. State, 16 Md. App. 439 (1973), contends that the court erred in not ascertaining that he knew the maximum possible sentence that could have been imposed for the offense to which he

was entering a guilty plea. In English v. State, supra, we said at 16 Md. App. 442:

> "The record must also clearly show that the accused knew the length of the maximum sentence authorized to be imposed upon conviction of the offense to which he is pleading."

We agree with the appellant that the court erred in not advising the appellant of the maximum possible sentence. On the other hand we note that the plea bargain stated at the beginning of the proceeding indicated the maximum sentence would be one year.

Transportation Article Section 27-101 (i) provides for a sentence of one year and $1,000.00 fine for a first time offender for driving while intoxicated. Thus the plea bargain did include the maximum possible sentence. While under different circumstances we may have reached a different conclusion,

we consider in the instant case that the appellant's contention is not grounds for setting aside his conviction.

III. Self-incrimination

Lastly the appellant contends that he was not advised of his right against self-incrimination. Despite this assertion on appeal, we note that the appellant testified on voir dire concerning his guilty plea as follows:

> "Q. You are also giving up the right to testify. If you were not to testify the Court or the jury, the finder of fact, would not infer you were guilty from the fact you did not testify. Do you understand that?
>
> A. Right."

While the question could have been more artfully phrased, we consider that it did convey the essential operative characteristics of the right against self-incrimination and the question did elicit an affirmative response.

As the Court of Appeals said in Davis v. State, 278 Md. 103, 114 (1976):

> "... [W]e conclude that Boykin [v. Alabama, 395 U.S. 238 (1969)] does not stand for the proposition that the due process clause requires state trial courts to specifically enumerate certain rights, or go through any particular litany, before accepting a defendant's guilty plea; rather, we think Boykin merely holds that the record must affirmatively disclose that the accused entered his confession of guilt voluntarily and understandingly."

We consider that the proceedings in the instant case fell within the parameters of Davis v. State, supra. Therefore we do not find the appellant's contention is grounds for setting aside his conviction.

JUDGMENT AFFIRMED. COSTS TO BE PAID BY APPELLANT.

JOHNNIE TAYLOR HALL	*	IN THE
v.	*	COURT OF APPEALS
STATE OF MARYLAND	*	OF MARYLAND
	*	PETITION DOCKET NO. 67
	*	SEPTEMBER TERM, 1982
	*	(No. 937, September Term,
	*	1981 Court of Special
	*	APPEALS)

* * * * * * * *

ORDER

Upon consideration of the petition for a writ of certiorari to the Court of Special Appeals in the above entitled case, it is

ORDERED, by the Court of Appeals of Maryland, that the petition be, and it is hereby, denied as there has been no showing that review by certiorari is desirable and in the public interest.

/s/ Robert C. Murphy
Chief Judge

Date: June 4, 1982.